

CHAPTER 18.5-02-03 FORMAL MEDIATION

Section

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18.5-02-03-00.1. Eligibility for formal mediation for secured debts.

1. To be eligible for assistance pursuant to North Dakota Century Code chapter 6-09.10, a farmer must be a farmer as defined in subsection 2 of North Dakota Century Code section 6-09.10-01.
2. To be eligible for formal mediation, the farmer must have a loan secured by agricultural property in default.
3. Any creditor of a farmer who is eligible for assistance pursuant to North Dakota Century Code chapter 6-09.10 and this section is eligible to request formal mediation.

History: Effective December 1, 1989; amended effective January 1, 1992.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-01, 6-09.10-03, 6-09.10-04, 57-02-08

18.5-02-03-01. Request for formal mediation.

1. A farmer or a farmer's creditor may request formal mediation by filing a request for formal mediation with the administrator. The request for formal mediation must be in writing and on forms provided by the administrator. The request for formal mediation must be deemed filed on the date it is received by the administrator. A farmer or the farmer's creditor may request formal mediation proceedings even though the farmer has previously participated in informal mediation proceedings. The request for formal mediation may be filed by mailing it by first-class mail, or by delivering to:

Administrator
Agricultural Mediation Service
Department of Agriculture
State Capitol
600 East Boulevard Avenue
Bismarck, North Dakota 58505

2. Institutions of the farm credit system may notify a farmer in default of a loan obligation of the availability of and the right to request formal

mediation, if the farmer's loan is secured by agricultural property. Institutions of the farm credit system may enter into agreements with the service that require the institutions to give farmers specific notice under certain circumstances. The failure of a farmer to respond within fourteen days to a receipt of notice of the availability of and the right to request mediation shall be deemed as a waiver of mediation rights. For the purposes of this chapter, "institutions of the farm credit system" means those institutions under the supervision of the farm credit administration required to participate in state agricultural loan and mediation programs pursuant to 7 U.S.C. 5101 et seq., Pub. L. 100-233, title V, January 6, 1988, 101 Stat. 1663.

3. Requests for formal mediation proceedings by the United States department of agriculture through its agencies such as the farmers home administration (FmHA), the commodity credit corporation (CCC) and other agencies or programs under the jurisdiction of the United States secretary of agriculture, must be made through the administrator. The failure of a farmer to respond within fourteen days to notification by the administrator of a request for mediation by the United States department of agriculture, or one of its agencies, must be deemed as a waiver of mediation rights.

History: Effective January 13, 1989; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03

18.5-02-03-02. Formal mediation proceedings.

1. Upon receipt of a request for formal mediation, the administrator shall assign a mediator to conduct formal mediation proceedings. If a farmer requests assistance, the administrator shall assign a negotiator to assist the farmer in preparing for formal mediation and to negotiate on behalf of the farmer during mediation.
2. When a creditor requests formal mediation, the administrator shall notify the farmer of the request, by first-class mail, and obtain the farmer's signed statement consenting to formal mediation and a list of all of the creditors of the farmer.
 - a. If the farmer refuses to consent to formal mediation, the administrator shall dismiss the formal mediation and give notice of the dismissal to the creditor requesting mediation. After dismissal of the formal mediation, the creditors may proceed to enforce any debts owed by the farmer. After a farmer has refused to consent to a request for formal mediation by a creditor, the farmer may not thereafter request formal mediation, with regard to that creditor, within six months following such refusal.

- b. If the farmer consents to formal mediation, the farmer shall provide to the administrator a list of all of the creditors of the farmer. Upon consent of the farmer to formal mediation, the administrator shall send a meeting notice to the farmer and all known creditors of the farmer. The notice must set forth the time and place for an initial mediation meeting among the farmer, the creditors of the farmer, and the mediator. The initial mediation meeting must be held within forty-five days after the filing of the request for mediation, unless the farmer or a creditor requests and receives, for good cause, an extension from the administrator.
3. When a farmer requests formal mediation, the farmer shall provide a list of all the creditors of the farmer to the administrator. The administrator shall send a meeting notice to the farmer and all known creditors of the farmer. The notice must set forth the time and place for an initial mediation meeting among the farmer, the creditors of the farmer, and the mediator. The initial meeting must be held within forty-five days after the filing of the request for mediation unless the farmer or a creditor requests and receives, for good cause, an extension from the administrator. The administrator may dismiss the mediation if the farmer fails to furnish a list of creditors within fifteen days of the request for formal mediation.
4. The mediator may call additional meetings among the farmer and all creditors or between the farmer and individual creditors, as the mediator deems appropriate, following the initial mediation meeting and before the filing of the final mediation report.
5. Any creditor required to participate in mediation pursuant to the Agricultural Credit Act of 1987 [Pub. L. 100-233; 101 Stat. 1664; 7 U.S.C. 5101 et seq.] and providing notice to the farmer shall include in the notice, at a minimum, notice of the availability of and the right to participate in formal mediation, a general description of how the mediation process works, and a request for formal mediation form. The notice must be sent to the farmer's last known address by first-class mail. A copy of the notice must be sent to the administrator.
6. Any creditor, other than a creditor required to participate in mediation pursuant to the Agricultural Credit Act of 1987 (see subsection 5) must be released from participation in mediation at any time, upon the creditor's written request. Written requests for release from participation in mediation must be addressed to the administrator.

History: Effective January 13, 1989; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-03-03. Mediation report. Within seventy-five days after the filing of the request for formal mediation, the mediator shall prepare and file with the

administrator a mediation report summarizing the outcome of the formal mediation. If additional mediation meetings are held either before or after the seventy-five-day period following the filing of the request for formal mediation, so that the mediator is unable to prepare and file the mediation report within the seventy-five-day period, the mediator shall prepare and file the mediation report within ten days of the conclusion of those additional mediation meetings.

The administrator shall send a copy of the mediation report to the farmer and the participating creditors. If mediation results in an impasse between the farmer and the farmer's creditors, the mediation report must contain a discharge from formal mediation and the creditors may proceed to enforce any debts owed by the farmer. Once the mediation report is filed with the administrator the formal mediation meetings are closed, unless a declaration of not participating in good faith is issued by the mediator, in which case mediation proceedings may be reopened pursuant to section 18.5-02-03-06. If mediation proceedings are reopened, the mediator may file an amended mediation report, if necessary. Otherwise, formal mediation by the same participants may only begin again pursuant to a new request for mediation.

History: Effective January 13, 1989; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-03-04. Duties of the mediator. During the mediation process, the mediator shall:

1. Listen to the farmer and the creditors desiring to be heard.
2. Attempt to mediate between the farmer and the creditors.
3. Advise the farmer and the creditors as to the existence of available assistance programs.
4. Encourage the parties to adjust, refinance, or provide for payment of the debts.
5. Advise, counsel, and assist the farmer and the creditors in attempting to arrive at an agreement for the future conduct of financial relations among them.
6. State, at the beginning of the mediation process, that the mediator's role is that of a facilitator and not a negotiator for either party.

History: Effective January 13, 1989; amended effective December 1, 1989.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-03-05. Confidentiality of mediation proceedings. As a condition for participation in mediation and except as otherwise provided in this section, all

parties shall agree to keep confidential (1) the financial information and records of the debtor and the creditors presented in the mediation proceedings and (2) the substance of all discussions conducted during the course of mediation. The parties may disclose confidential information only as permitted by North Dakota Century Code section 6-09.10-10.

History: Effective January 13, 1989; amended effective January 1, 1992.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04

18.5-02-03-06. Good faith participation. All participants in mediation shall participate and act in good faith. Because mediation is an attempt to reach a voluntary settlement, the fact that the parties cannot reach agreement to resolve the farmer's farm credit problems is not, standing alone, evidence of bad faith. Any party to formal mediation may request a declaration from the mediator that another party is not participating in good faith. A mediator shall issue a declaration, including the reasons for the declaration, when the mediator determines that the party against whom the declaration is sought:

1. Has failed to attend any meeting called by the mediator without good cause;
2. Has, after January 13, 1989, and before completion of formal mediation proceedings, taken steps to initiate legal action against a participating party or to enforce the obligation of a party, including the sending of any notices required to be sent as a necessary prerequisite for commencing legal action, foreclosure, or repossession;
3. Has failed to produce, at the request of the mediator, within a reasonable time after requested, any relevant information within the party's possession;
4. Has failed to respond within ten business days to any proposal made by the farmer or any creditor; or
5. Has engaged in other behavior that evidences an intention not to honestly and sincerely participate in the effort to resolve the farmer's credit problems.

No declaration from a mediator that a party is not participating in good faith may be based upon any actions of the party prior to January 13, 1989. If a mediator determines that a party is not participating in good faith, an affidavit to that effect may be filed by the mediator with the administrator indicating the reasons for the determination. If the mediator finds that any party is not participating in good faith, the mediator may terminate the mediation proceedings and issue the mediation

report or continue or reopen the mediation proceedings for up to an additional sixty days to attempt to find an acceptable solution to the farmer's credit problems.

History: Effective January 13, 1989; amended effective December 1, 1989; January 1, 1992.

General Authority: NDCC 6-09.10-09

Law Implemented: NDCC 6-09.10-03, 6-09.10-04